



WESTFIELD-WASHINGTON  
BOARD OF ZONING APPEALS

January 23, 2024  
2401-VU-02 & 2401-VS-03  
Exhibit 1

**Petition Number:** 2401-VU-02 & 2401-VS-03

**Project Name:** Bubs Burgers

**Subject Site Address:** 229 Mill St. (the "Property")

**Petitioner:** R & M Burgers (the "Petitioner")

**Representative:** Civil & Environmental Consultants (the "Representative")

**Request:** Petitioner requests a Variance of Use to permit a Sit-Down Restaurant and Specialty Restaurant on 0.29 acres +/- in the MF1: Multi-family Low Density Zoning District (UDO Article 13.2) and Variances of Development Standard to encroach into the Front Yard Building Setback Line and to modify the density, minimum living area, landscaping, architectural, and parking standards to accommodate a proposed mixed-use building on 0.29 acres +/- in the MF1: Multi-family Low Density Zoning District. (UDO Articles 4.10(H)(1), 4.1(D), 4.1(F), 6.8, 6.3 and 6.14(G)(11).

**Current Zoning:** MF1: Multi-family Low Density Zoning District

**Current Land Use:** Vacant Single-family Residential

**Approximate Acreage:** 0.29 acres +/-

**Exhibits:**

1. Staff Report
2. Location Map
3. Site Plan
4. Architectural Elevations
5. Landscape Plan

**Staff Reviewer:** Weston Rogers, Senior Associate Planner

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**PROPERTY INFORMATION**

The subject Property is 0.29 acres +/- in size and is located at 229 Mill Street – generally northwest of the intersection at Park Street and Mill Street. The Property is zoned the MF-1: Multifamily Low-density District. The adjacent properties are zoned as follows –

- North of Property: MF-1, Multi-family Low Density District (Something Splined)
- East of Property: Grand Junction Plaza PUD (Grand Junction Park)
- South of property: GB, General Business (Nyla's)
- West of property: Park Street in the Junction PUD (Root 31)

Since as late as the 1950's the Property appears to have include a Single-family Dwelling structure. Since the inception The Westfield-Washington Township Comprehensive Zoning Ordinance of 1977 the property has been zoned MF-1: Multi-Family Low-density District.

## **SUMMARY OF VARIANCES**

### **Requested Variance of Use**

The Petitioner is requesting a Variance of Use to permit a “Sit Down Restaurant” (ex. Burger Restaurant) and a “Specialty Restaurant” (ex. Ice Cream Shop) land uses at 229 Mill St., currently zoned MF-1: Multi-Family Low Density. Article 13.2. The use classifications “Sit Down Restaurant” and a “Specialty Restaurant” are currently not permitted within the MF-1 zoning District.

It should be noted that if 2401-VU-02 is not approved, then variance request 2401-VS-03 is not necessary.

### **Requested Variances of Development Standard**

#### **MF-1 District Standards**

- Maximum Density – Article 4.10(D)
  - MF-1 Zoning District standards permit a maximum of six (6) dwelling units per an acre.
    - The subject Property is approximately 0.29 acres +/-
    - A maximum density of 1.74 Units is permitted on the Property.
  - The proposed building includes three (3) Multi-family Dwelling Units
  - *Moreover, the Petitioner requests to modify the modify the maximum density to permit three (3) Multi-family Dwelling Units on the Property in lieu of 1.74 Dwelling Units.*

<i>Permitted</i>	<i>Requested</i>
<i>1.74 Dwelling Units</i>	<i>3 Dwelling Units</i>

- Minimum Living Area – Article 4.10(F)
  - MF-1 Zoning District standards require a Minimum Living Area of 1,000 square feet
  - The proposed architectural floor plan includes Multi-family Dwelling Units with approximately 950 square feet of Living Area.
  - *Moreover, the Petitioner request to modify the Minimum Living Area to 900 square feet in lieu of 1,000 square feet.*

<i>Permitted</i>	<i>Requested</i>
<i>Minimum 1,000 SF Living Area</i>	<i>Minimum 900 SF Living Area</i>

- Front Yard Setback – Article 4.10(H)(1)
  - MF-1 Zoning District standards required a Minimum Front Yard Building Setback distance of twenty (20) feet.
  - The proposed building location is setback approximately eleven (11) feet.
  - *Moreover, the Petitioner requests to encroach nine (9) feet into the twenty (20) foot Minimum Front Yard Building Setback Line along Park Street.*

<i>Permitted</i>	<i>Requested</i>
<i>Minimum 20' Front Yard Bldg. Setback</i>	<i>9' Encroachment into Front Yard Bldg. Setback</i>



#### Architectural Standards

- The Petitioner requests to exempt Article 6.3(E) “Architectural Standards; Multi-family Districts” from applying to the property. Rather, the Petitioner proposes to develop the proposed building on the Property in substantial compliance the Exhibit 4, Architectural Elevations.

<i>Permitted</i>	<i>Requested</i>
<i>Article 6.3(E) Architectural Standards</i>	<i>Exempt Article 6.3(E) and Develop Building in Substantial Compliance with Architectural <u>Exhibit 4</u></i>

#### Landscape Standards

- The Petitioner requests to exempt Article 6.8 “Landscape Standards” from applying to the property. Rather, the Petitioner proposes to install landscaping on the Property in substantial compliance the Exhibit 5, Landscape Plan.

<i>Permitted</i>	<i>Requested</i>
<i>Article 6.8 Landscape Standards</i>	<i>Exempt Article 6.8 and Develop Site in Substantial Compliance with Landscape Plan <u>Exhibit 5</u></i>

#### Parking and Loading Standards

- The Petitioner requests to exempt Article 6.14(G)(11) from applying to the Property. Rather, the Petitioner proposes to provide three (3) on-site parking spaces for each Multi-family Dwelling Unit and one (1) accessible parking space on the Property.

<i>Permitted</i>	<i>Requested</i>
<i>Article 6.14(G)(11) Parking Standards</i>	<i>Exempt Article 6.14(G)(11) and provide four (4) total parking spaces on site</i>

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### **COMPREHENSIVE PLAN**

The Property is located within an area that is identified in the Grand Junction Addendum (the “Addendum”), an addition to the Westfield-Washington Township Comprehensive Plan, as the Grand Junction Plaza Block (the “Sub-Area”) of the Grand Junction Sub-District.

The Addendum states that the Sub-Area should, “have a more urban form than the village or old town form of other sub-areas”. The Addendum also states that land uses within the Sub-Area, “are encouraged to be a mix of uses typically associated with central business and entertainment districts and that residential uses should be restricted from the first floor within the sub-area.”

The area immediately surrounding the Property is either being redeveloped or contemplated for redevelopment in the future in accordance with the Comprehensive Plan and its subsequent amendments



for Downtown Westfield such as the Grand Junction Plaza. As a result of these economic development opportunities, there is an emerging desire for transitional businesses in the downtown area that contribute to further activity and liveliness. Nearby properties (203 Jersey Street, 227 Jersey Street, 337 Jersey Street, and 201 Mill Street) were granted variances at previous Board of Zoning Appeals (BZA) meetings, allowing a plant shop, arts center, coffee shop, and a health and wellness business all in former residences.

The Comprehensive Plan is not law; however, the Comprehensive Plan is intended to serve as a guide in making land use decisions.

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### **PROCEDURAL**

**Public Notice:** The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Use and Variance of Development Standard. This petition is scheduled to receive its public hearing at the January 23, 2024, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals' Rules of Procedure.

**Conditions:** The UDO<sup>1</sup> and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

**Acknowledgement of Variance:** If the Board of Zoning Appeals approves this petition, then the UDO<sup>2</sup> requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

**Variances of Development Standard:** The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

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<sup>1</sup> Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

<sup>2</sup> Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

Variances of Use: The Board of Zoning Appeals shall approve or deny variances from the terms of the UDO. A variance may be approved under Indiana Code § 36-7-4-918.4 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The need for the variance arises from some condition peculiar to the property involved;
4. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property; and
5. The approval does not interfere substantially with the Comprehensive Plan.

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**DEPARTMENT COMMENTS:**

Recommended Conditions for Approval:

**If the Board is inclined to approve 2401-VU-02 & 2401-VS-03, the Department recommends the following conditions:**

1. The Variance of Use shall be limited to a Sit-Down Restaurant, Specialty Restaurant or a substantially similar use as determined by the Director of Community Development;
2. That the Property shall be developed in substantial compliance with **Exhibit 3** Site Plan as determined by the Director of Community Development;
3. That the exterior architectural design for the proposed building shall be developed in substantial compliance with **Exhibit 4** Architectural Elevations as determined by the Director of Community Development;
4. That the Property shall be landscaped in substantial compliance with **Exhibit 5** Landscape Plan as determined by the Director of Community Development;
5. That no more than three (3) Multi-family Dwelling Units shall be permitted on the Property;
6. That a minimum of three (3) parking spaces, as shown on the Site Plan, shall be dedicated for the residents of the Multi-family Dwelling Units on the Property;
7. That the Petitioner records an Acknowledgement of Variance with the Hamilton County Recorder's Office and returns a copy of the recorded instrument to the Community Development Department.

Recommended Findings for Approval (2401-VU-02):

**If the Board is inclined to approve the Variance of Use**, then the Department recommends the following findings:

*The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

- **Finding:** It is unlikely that allowing a business defined as a “Sit-Down Restaurant” and “Specialty Restaurant” to locate on the Property will be injurious to the public health, safety, morals, and general welfare of the community because the request is consistent with the uses contemplated in the City’s Comprehensive Plan and the request is similar in nature to the existing uses located adjacent to the subject Property.

*The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

- **Finding:** It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner as the proposed use will be consistent with the character of the surrounding area. Economic redevelopment activity is anticipated within the proximity of the Property, including the Grand Junction Plaza, that will include more commercial operations.

*The need for the variance of use arises from some condition peculiar to the property involved.*

- **Finding:** The use of a “Sit-Down Restaurant” and “Specialty Restaurant” is not permitted within the MF-1: Multi-Family Low Density District. The Comprehensive Plan and subsequent Comprehensive Plan Addendums have identified an emerging economic development opportunity in downtown. As this redevelopment will occur overtime, the transitional period warrants the redevelopment of existing properties to promote downtown as a destination and lively center to the community.

*The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:*

- **Finding:** The use of a “Sit-Down Restaurant” and “Specialty Restaurant” is not permitted within the MF-1: Multi-Family Low Density District. The strict application of the terms of the zoning ordinance would allow for arguably less appropriate singular land uses such as a nursing home, assistive living facility, or day care facility which would be in conflict with the surrounding context of existing land uses adjacent to the subject Property.

*The approval does not interfere substantially with the comprehensive plan:*

- **Finding:** The Westfield-Washington Comprehensive Plan (the “Comprehensive Plan”) includes this property in the area designated as “Downtown”. The Comprehensive Plan recommends that land uses in the Downtown area include commercial, offices, and retail as well as residential. Additionally, the subject Property Falls within the Grand Junction Plaza Block of the Grand Junction Amendment to the Comprehensive plan which calls for a mix of uses typically associated with central business and entertainment districts. The use of the Property as a “Sit-Down Restaurant” and “Specialty Restaurant” with a Multi-family living component would not interfere substantially with the Comprehensive Plan.



Recommended Findings for Approval (2401-VS-03):

**If the Board is inclined to approve the Variance of Development Standard**, then the Department recommends the following findings:

*The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

- **Finding:** It is unlikely that allowing a business defined as a “Sit-Down Restaurant” and “Specialty Restaurant” to locate on the Property will be injurious to the public health, safety, morals, and general welfare of the community because the request is consistent with the uses contemplated in the City’s Comprehensive Plan and the request is similar in nature to the existing uses located adjacent to the subject Property.

*The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

- **Finding:** It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner as the proposed use will be consistent with the character of the surrounding area. Economic redevelopment activity is anticipated within the proximity of the Property, including the Grand Junction Plaza, that will include more commercial operations.

*The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:*

- **Finding:** The use of a “Sit-Down Restaurant” and “Specialty Restaurant” is not permitted within the MF-1: Multi-Family Low Density District. The strict application of the terms of the zoning ordinance would allow for arguably less appropriate singular land uses such as a nursing home, assistive living facility, or day care facility which would be in conflict with the surrounding context of existing land uses adjacent to the subject Property.

Denial: If the Board is inclined to deny the requested variance, then the Department recommends denying the variance, and then tabling the adoption of findings until the Board’s next meeting with direction to the Department to prepare the findings pursuant to the public hearing evidence and Board discussion.